NOV 4 1965
HAROLD B. WILLEY, Clerk

No. 51

In the Supreme Court of the United States

October Term, 1965

FEDERAL POWER COMMISSION, PETITIONER

v.

MOBILE GAS SERVICE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF FOR THE FEDERAL POWER COMMISSION

RALPH S. SPRITZER,
General Counsel,
WALTER J. STEVENS,
Assistant General Counsel,
[illegible],
Attorneys,
[illegible],
Washington, D. C.

INDEX

	Page
Argument	2
I. The relevance of The Interstate Commerce Act and decisions	2
II. The state cases	6
A. State cases cited in the Commission's main brief	7
B. State cases relied on by Mobile	15
III. The State commissions' views	19
IV. Further discussion of the *Wichita* case	24
Conclusion	29

CITATIONS

Cases:

Armour Packing Co. v. *United States*, 209 U. S. 56 ..... 2, 4, 28

Attleboro Steam & Electric Co. v. *Narragansett Elec. Lighting Co.*, 295 Fed. 895 ..... 15, 16

Birmingham Electric Co. v. *Alabama Public Service Commission*, 233 Ala. 675 16

Caple v. *Interstate Utilities Co.*, P. U. R. 1930A 18 20

Childs v. *Brooklyn Edison Co.*, 105 N. Y. S. 2d 503 10

Denver & South Platte Ry. Co. v. *City of Englewood*, 62 Colo. 229 8

Dry Dock, E. B. & B. R. R. Co., Matter of, 254 N. Y. 305 ..... 9, 10

Federal Power Commission v. *Sierra Pacific Power Co.*, Nos. 51, 53, this Term 20

Fulton, City of v. *Public Service Commission*, 275 Mo. 67, writ of error dismissed, 251 U. S. 546 ..... 13, 14

Hackensack Water Co. v. *Board of Public Utility Commissioners*, 96 N. J. L. 184 8

Harrison Electric Co. v. *Citizens' Ice and Storage Co.*, 149 Ark. 502 10

Cases—Continued

	Page
Interstate Commerce Commission v. *Chicago G. W. Ry.*, 209 U. S. 108	5
Jones v. *Montpelier & Barre Light & Power Co.*, 96 Vt. 397	19
Kansas City Light & Power Co. v. *Midland Realty Co.*, 338 Mo. 1141, affirmed, 300 U. S. 109	12, 13, 14
Lamar, City of v. *Town of Wiley*, 80 Colo. 18	7, 8
Manitowoc, City of v. *Manitowoc & Northern Traction Co.*, 145 Wis. 13	5
Menasha W. W. Co. v. *Minneapolis, St. P. & S. S. M. Co.*, 245 U. S. 633	28
Midland Realty Co. v. *Kansas City Power & Light Co.*, 300 U. S. 109	28
Minneapolis, St. Paul & S. S. M. R. Co. v. *Menasha W. W. Co.*, 159 Wis. 130, affirmed, 245 U. S. 633	11
New Jersey Suburban Water Co. v. *Town of Harrison*, 120 N. J. L. 546, reversed, 122 N. J. L. 189	8, 9
North Coast Power Co. v. *Public Service Commission*, 114 Wash. 102	14
Northern Pac. Ry. Co. v. *St. Paul & Tacoma Lumber Co.*, 4 F. 2d 359, appeal dismissed, 269 U. S. 535	5
North Hempstead, Town of v. *Public Service Corp.*, 231 N. Y. 447	9, 10
Ohio & Colorado S. & R. Co. v. *Public Utilities Commission*, 68 Colo. 137	8
Public Service Commission v. *C. G. E. L. & P. Co.*, 9 Md. Pub. Serv. Comm. Rep. 297	22
Public Service Commission v. *Pavilion Natural Gas Co.*, 232 N. Y. 146	9, 10
Public Utilities Commission v. *Wichita R. & Light Co.*, 268 Fed. 37	25
Rivelli v. *Providence Gas Co.*, 44 R. I. 76	16
Rutland Ry. Light & Power Co. v. *Burditt Bros.*, 94 Vt. 421	18
Searsport Water Co., In re, 118 Me. 382	17
Southern Union Gas Co., Matter of, Case No. 418, January 26, 1955	21, 22

Cases—Continued

	Page
State ex rel. Evansville City Coach Lines v. *Rawlings*, 229 Ind. 552	17
State ex rel. Sedalia v. *Public Service Commission*, 275 Mo. 201, writ of error dismissed, 251 U. S. 547	13, 14
Suburban Water Co. v. *Oakmont Borough*, 268 Pa. 243	5, 9
Tyler Gas Service Company v. *United Gas Pipe Line Company*, 217 F. 2d 73	4
Virginia, Commonwealth of ex rel. Page Milling Co. v. *Shenandoah Light & Power Corp.*, 135 Va. 47	15
Wichita Railroad and Light Co. v. *Public Utilities Commission*, 260 U. S. 48	16, 24, 25–26, 27, 28
Winfield v. *Public Service Commission*, 187 Ind. 53	17

Statutes:

Federal Power Act, 49 Stat. 838, 16 U. S. C. 791a *et seq.*:	
Section 205 (d)	6
Section 205 (e)	6, 16
Natural Gas Act, 52 Stat. 821, 15 U. S. C. 717 *et seq.*:	
Section 4 (c)	6
Section 4 (d)	6
Section 4 (e)	4, 6, 16
Section 5	6
California Public Utilities Code, Section 454	20
Idaho Code, Section 61–622	20
Indiana Statutes:	
Section 47–1225 (g)	17
Section 47–1227	17
Section 54–317	17
Kansas Session Laws 1911, c. 238, Section 20	28
Maine Revised Statutes, c. 44, Section 40	18
Vermont General Laws (1917):	
Section 5689	18
Sections 5691–92	19

Statutes—Continued Page

Vermont Statutes (1947):

Section 9375 19

Section 9376 19

Section 9737 18

Sections 9739–40 19

Wisconsin Statutes, Section 196.20 (2) 12

Miscellaneous:

Hagerstown & Frederick Railway Co., Matter of, 9 Md. Pub. Serv. Comm. Rep. 442 22

Road Directors of Allegany County and C. & P. Tel. Co., Matter of, 11 Md. Pub. Serv. Comm. Rep. 326 22

West Arlington Realty Co. and Artesian Water Co., Matter of, 12 Md. Pub. Serv. Comm. Rep. 335 22

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 31

FEDERAL POWER COMMISSION, PETITIONER

v.

MOBILE GAS SERVICE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF FOR THE FEDERAL POWER COMMISSION

The Court may be helped by further discussion of Mobile's claim that the Interstate Commerce Act and decisions are irrelevant to this case, and also of Mobile's attack on our position that the overwhelming majority of state regulatory schemes provide a filed rate procedure which is comparable to the Gas and Power Acts and is applied, as the Commission did here, to changes in contract rates instituted by the utility without the consent of the customer. In discussing the state cases, we will also show that, insofar as we have been able to determine, the state regulatory commissions, like the state courts, have held that

schedules filed under the filed rate procedure supersede contract rates even where the customer has not consented to the rate change. Finally, we will discuss briefly the *Wichita* case, primarily to correct Mobile's misreading of the facts of that case.

ARGUMENT

I.

THE RELEVANCE OF THE INTERSTATE COMMERCE ACT AND DECISIONS

In an attempt to distinguish *Armour Packing Company* v. *United States*, 209 U. S. 56, 82 (discussed in our main brief at pp. 49–55), Mobile seizes on the fact that the Commerce Act does not provide, as do the Gas and Power Acts, for the filing of contracts affecting or relating to rates, in addition to schedules of the rates themselves. Mobile argues that "private rate contracts are outlawed in the railroad industry" (Brief, pp. 14–15), whereas under the Gas and Power Acts it says they are given a status superior to subsequently filed rate schedules, even though the latter may be found by the Commission to be just and reasonable and not unduly discriminatory or preferential (Brief, pp. 15–20). Mobile also purports to find an inconsistency between our contention that under the Gas and Power Acts such contracts are as valid, lawful, and enforceable as utility rate contracts have always been under rate regulation, and the fact that the rates

embodied in such contracts are subject to change by the filed rate procedure (Brief, pp. 20–22):

Such a change it persists in calling "unilateral abrogation" of the contract by the utility, a semantic device on which we have previously commented (main brief, p. 32), which disregards the fact that the change is only possible with Commission acquiescence under a statutorily prescribed procedure. For the filed rate procedure does not consist merely in the recording of the change at the offices of the Commission but, as we pointed out in a portion of our main brief (pp. 20–22) overlooked by Mobile, the utility must submit as a part of its filing what is in substance a *prima facie* rate case in support of the proposed change. This is scrutinized by the Commission in the thirty-day period which the Act provides must elapse before the change can become effective, unless waived by the Commission. Since the *prima facie* case specified in the Commission's rules consists of a showing of the cost of rendering the service, the Commission is able to check many of the elements of the utility's cost study against the utility's own annually reported plant investment, depreciation reserve, operating expenses, volume of sales, revenues, and capital and other fixed charges, as well as against industry averages and averages for comparable utilities. If the *prima facie* showing is not satisfactory, a hearing is set at which "the burden of proof to show that the increased rate or charge

is just and reasonable" is upon the utility. Following the hearing, the Commission is expressly authorized to "make such orders with reference [to the proposed rate] as would be proper in a proceeding initiated after it had become effective [*i. e.*, a proceeding on complaint by others or upon the Commission's own initiative]." Section 4 (e), main brief, pp. 102–103. This is far from unilateral action by one party to the contract in disregard of its contract rates; rather, in so proceeding, the gas company "followed the procedure prescribed by Section 4 of the Act, and that when the schedule became effective * * *, this would be not contrary but pursuant to the statutory scheme." *Tyler Gas Service Company* v. *United Gas Pipe Line Company,* 217 F. 2d 73, 78 (C. A. 5). The gas company is not the sole arbiter; the Commission is a direct participant and performs a responsible and controlling role. There is certainly no delegation of "legislative power to abrogate contracts to one of the parties to the contract" (Mobile brief, p. 23).

Moreover, there is no merit to the basic assumption of Mobile's attempted distinction of the *Armour* case, *i. e.*, that "private rate contracts are outlawed in the railroad industry." Such contracts are merely modified insofar as they differ from the filed or prescribed rate. This is shown by the *Armour* case itself, in the next two sentences following the portion quoted by Mobile at page 15 of its brief (209 U. S. at 82):

> The statute being within the constitutional power of Congress, and being in force when the contract was made, is read into the contract and becomes a part of it.
>
> If the shipper sees fit to make a contract covering a definite period for a rate in force at the time he must be taken to have done so subject to the possible change of the published rate in the manner fixed by statute, to which he must conform or suffer the penalty fixed by law.

See also *Interstate Commerce Commission* v. *Chicago G. W. Ry.*, 209 U. S. 108, 119; *City of Manitowoc* v. *Menitowoc & Northern Traction Co.*, 145 Wis. 13, 29–30; *Northern Pac. Ry. Co.* v. *St. Paul & Tacoma Lumber Co.*, 4 F. 2d 359, 363 (C. A. 9), appeal dismissed, 269 U. S. 535.

It is, therefore, clear that the industry differences to which we alluded (main brief, pp. 51–55) *as showing that the filing of contracts was administratively feasible for the interstate wholesale gas and electric industries while it had not been for the railroad industry,* present no basis for assuming that Congress attempted to give private rate contracts any higher status in the Gas and Power Acts than they had under the Interstate Commerce Act.[1] Cf. *Suburban Water Co.* v. *Oakmont Borough*, 268 Pa. 243, 247–53. Congress

[1] Mobile's attempt to attribute to Congress a different intent in enacting the provisions of Section 4 (d) and 4 (e) from the purpose of the provisions of the Interstate Commerce Act upon which they were modeled, by speculating that Congress meant to respond in a particular way to cer-

merely provided that they should have the same status as filed schedules of rates themselves. For Congress was at pains in Section 4 to provide in precisely parallel terms that both contracts and rates should be filed (Section 4 (c)) and changed (Section 4 (d)) on initiative of the utility and the changes should be scrutinized by the Commission (Section 4 (e)). Congress also used the same terms in providing in Section 5 that both contracts and rates should be subject to investigation, hearing, findings and change on complaint of others or on the initiative of the Commission. The same language which in Section 5 applies to both cannot be read as not applying to contracts in Section 4, as Mobile would have it.[2]

II

THE STATE CASES

In its analysis of the state cases cited by our main brief, Mobile has nowhere disputed that they

---

tain language of Mr. Justice Day in the *Armour* opinion (Mobile brief, pp. 14–16), is not supported by a single citation to the legislative history of the Power or Gas Acts, and we are not aware of anything in that history that even looks in that direction.

[2] It is noteworthy also that Mobile is not only unable to point to any difference in the wording of Sections 4 (d) and 4 (e) of the Gas Act (and 205 (d) and 205 (e) of the Power Act) relating to contracts, from that relating to schedules of rates, but it is also unable to point to anything in the wording of the Act to support its further contention that contract rates may be changed by a filed rate schedule if the customer does not object (Mobile brief, p. 33).

are, each and every one, clear, undeniable holdings that rates filed by a utility under a filed rate procedure may supersede contract rates. See Mobile brief, pp. 51–56, 44–46. Mobile has, however, tried to transform this line of cases in Arkansas, Colorado, Missouri, New Jersey, New York, Pennsylvania, Washington, and Wisconsin into a "minority view" of two states, against which it purports to line up an "overwhelming weight of authority," consisting of six or more states to the contrary. That effort, we shall show, is wholly misleading and erroneous, and the very large majority of state decisions under filed rate procedure statutes, as well as the large number of states having such statutes, completely confirm our contention (main brief, pp. 55–80) that the filed rate procedure as administered by the Federal Power Commission is common and well recognized and, far from being in any sense "novel" or a "radical" departure from regulatory technique as the court below supposed (R. 150–152, 154) is one of the "usual provisions" of regulatory legislation which Congress intended to adopt.

A. STATE CASES CITED IN THE COMMISSION'S MAIN BRIEF

(1). Mobile attempts to discredit, by the citation of additional cases, the Colorado, New Jersey, and New York cases cited in our main brief. It seeks to dilute the effect of *City of Lamar* v. *Town of Wiley*, 80 Colo. 18, and *Denver & South Platte*

Ry. Co. v. *City of Englewood*, 61 Colo. 229, which concededly applied the filed rate procedure to supersede contract rates (Mobile brief, p. 54; see our main brief, p. 58), by relying on *Ohio & Colorado S. & R. Co.* v. *Public Utilities Commission*, 68 Colo. 137 (Mobile brief, pp. 54–55). But *Ohio & Colorado* does not bear on the Colorado law on this point; it preceded *Lamar* and the filed rate procedure was not even at issue. The Colorado court there reversed an order of the state commission granting higher rates on the ground that the evidence did not support it and stated, as quoted by Mobile (Brief, p. 54), that an order of the commission must have sufficient basis. Obviously, the case deals only with the sufficiency of an order entered after a full hearing, such as the Federal Power Commission could hold, if it thought it appropriate, under Section 4 (e) of the Gas Act, or under Section 5 (a) on complaint of the purchasing company.

Noting the reversal on other grounds of *New Jersey Suburban Water Co.* v. *Town of Harrison*, 120 N. J. L. 546 (see our main brief, p. 58), Mobile claims that *Hackensack Water Co.* v. *Board of Public Utility Commissioners*, 96 N. J. L. 184, indicates a contrary practice (Brief, p. 52). But *Hackensack* and any practice it may indicate preceded the *Suburban Water Co.* case; also, examination of *Hackensack* shows, as was noted in *Suburban Water Co.* (see 120 N. J. L. at 550–51), that it did not resolve the issue here

involved. Furthermore, while the Court of Errors and Appeals reversed in *Suburban Water Co.* on the ground that the utility was estopped from asserting that it had filed a "schedule of increased rates" (122 N. J. L. at 190, 194), the court recognized that such a schedule would be "automatically effective" (122 N. J. L. at 194), *i. e.*, "effective, by the mere act of filing, until suspended, changed, or altered by the board pending the determination of the ultimate question of whether the rates so promulgated were 'just and reasonable'" (122 N. J. L. at 191). See our main brief, pp. 58–59, n. 38.

Likewise, the New York cases (*Public Service Commission* v. *Pavilion Natural Gas Co.*, 232 N. Y. 146, and *Town of North Hempstead* v. *Public Service Corporation*, 231 N. Y. 447) are in accord with the Commission's reading. See main brief, pages 61–63. Contrary to Mobile's statement, the New York Court of Appeals did not subsequently "refuse to follow those cases" in *Matter of Drif Dock, E. B. & B. R. R. Co.*, 254 N. Y. 305 (Mobile brief, p. 53). In the latter case the court, far from departing from the *Hempstead* and *Pavilion* decisions, recognized them as its "construction of the legislative intent as embodied in the Public Service Commissions law" (254 N. Y. at 315). The New York court held that they did not control in the case then before it only because the problem involved was an entirely different one, not subject to the ordinary

regulatory provisions (254 N. Y. at 314–16); for in contrast to the *Hempstead* and *Pavilion* situations, where the rates had been established by contracts between the utility and the purchaser, maximum rates in *Dry Dock* had been fixed in a statute by the state legislature itself. Consequently, since this maximum rate was the result of a direct legislative command, it could not be exceeded except by a subsequent act of the legislature or by the affirmative act of the administrative body, the Public Service Commission, to which the legislature had delegated its authority. Only in this special situation was New York's filed rate procedure ineffective to change previously existing rates. 254 N. Y. at 313–16.[3]

(2). Mobile's second distinction of the Commission's cases—that Arkansas and Wisconsin have Commerce Act-type statutes—also does not advance its position. On the basis of a statement in *Harrison Electric Co.* v. *Citizens' Ice and Storage Co.*, 149 Ark. 502 (see main brief, p. 63), that the Arkansas statute "is patterned, to a considerable extent, after the Federal statute creating the Interstate Commerce Commission" (149 Ark. at 506), Mobile seeks to dismiss the case as governed by its own Commerce Act discussion

[3] The application of the filed rate procedure of the New York statute, involved in the *Hempstead* and *Pavilion* cases, to situations involving contract rates was followed in 1951 in *Childs* v. *Brooklyn Edison Co.*, 105 N. Y. S. 2d 503, 507–08 (Sup. Ct.).

(Mobile brief, p. 31). The fact is, however, that the court's statement is authority for our position, since it points up the circumstance which we have stressed in our main brief (pp. 44–45, 55–57), *i. e.*, that the array of state statutes and the Interstate Commerce Act's analogous filed rate procedures are related and together they represent the "usual regulatory measures" which Congress had in mind in enacting the Gas and Power Acts. The Gas and Power Acts, too, are "patterned, to a considerable extent, after the Federal statute creating the Interstate Commerce Commission." See, also, *supra*, pp. 2–6.

Minneapolis, St. Paul & S. S. M. R. Co. v. *Menasha W. W. Co.*, 159 Wisc. 130, affirmed, 245 U. S. 633, where the filed rate procedure was applied to an increase of a railroad's contract rates (see main brief, pp. 66–68), also supports our position despite Mobile's effort to distinguish it. In Wisconsin, as we noted in our main brief (p. 69), increases in the rates of utilities other than railroads are expressly excluded from the filed rate procedure and can be made only after hearing and order. But this does not mean, as Mobile argues (Brief, pp. 51–52) that "as the Solicitor General concedes, Wisconsin draws a sharp distinction between the regulation of carriers and other utilities, just as Congress did: 'approval is required for increases in rates proposed by other utilities' (C. Br. 69)." In the first place, the Wisconsin distinction between rates of railroads

and rates of other utilities is expressly embodied in the statute governing the latter's rates;[4] in contrast, Congress made no such distinction between the regulation of rates in the Commerce Act and in the Power and Gas Acts. Secondly, Wisconsin's legislature did not draw a distinction between contract rates and other rates as Mobile contends should be done here. In that state, the availability of the filed rate procedure to change rates depends only on the industry involved and upon the change desired; it never depends on the existence *vel non* of a contract. But Mobile's whole case depends on a judicial separation of contract rates from all others, under a statute which makes no such distinction in its terms.

(3). Nor is there any merit to Mobile's claim that Missouri and Washington have unusual constitutional and statutory provisions which make the cases from those courts irrelevant. Although Mobile's attempt to distinguish *Kansas City Light & Power Co. v. Midland Realty Co.*, 338 Mo. 1141, affirmed, 300 U. S. 109, on the ground that a Missouri constitutional provision made all contracts unlawful (Mobile brief, p. 45), has already been discussed in our main brief, p. 66, n. 40, we may add (1) that this Court's opinion was ex-

[4] Wisconsin Stat. Sec. 196.20 (2), dealing with utilities other than railroads, provides:

"No change in schedules which constitutes an increase in rates to consumers shall be made except by order of the commission, after an investigation and hearing."

pressly grounded on the assumption that the rate contracts were valid (300 U. S. at 113), (2) that the Missouri Supreme Court's opinion indicates that the contracts continued in existence until the changed rates were filed (338 Mo. at 1147–49) and that the effect of the schedule filed by the utility was determined solely on the basis of the filed rate procedure and without reference to the Missouri Constitution (338 Mo. at 1145–47).

Moreover, the constitutional provision, that "The exercise of the police power of the State shall never be infringed" (275 Mo. at 209), which Mobile asserts is unusual, had been brought into issue in two previous cases, relied upon by Mobile, solely because municipal contracts were there involved. *State ex rel. Sedalia* v. *Public Service Commission*, 275 Mo. 201, writ of error dismissed, 251 U. S. 547; *City of Fulton* v. *Public Service Commission*, 275 Mo. 67, writ of error dismissed, 251 U. S. 546; see 338 Mo. at 1148. In rejecting the argument in these cases that contracts entered into by a city under the express authority of a state statute could not be altered by the commission (275 Mo. at 203), the court pointed out that under the State Constitution the legislature could not exempt municipal contracts from regulation. 275 Mo. at 209; 275 Mo. at 71. In so holding, the Missouri court concluded not that contracts are void but merely that they are subject to change in the manner provided in the

regulatory statute. In other words, in Missouri as elsewhere, private contracts, although valid *inter se*, cannot operate to frustrate the police power of the state. Thus, in *Sedalia* and *Fulton*, the rates, although embodied in a contract, were altered by "the order of the Public Service Commission for reasonable rates" after hearings and investigation (275 Mo. at 212, 71), and, in *Midland*, the rates, originally the subject of a private contract, were changed by schedules filed by the utility pursuant to the filed rate procedure, as authorized by the Missouri statute, 338 Mo. at 1147; 300 U. S. at 111, 114.

In *North Coast Power Co.* v. *Public Service Commission*, 114 Wash. 102, the Washington court sustained a change in contract rates under the filed rate procedure, after pointing out that under the terms of that procedure, "the affirmative consent of the commission * * * was not required" but "the proposed new rate * * * which was properly noticed and filed, becomes automatically effective, subject to be defeated by the commission only in the manner already indicated"—*i. e.*, by suspension and a finding that the new rate was unreasonable (114 Wash. at 106). On the basis of the further statement of the Washington court that an exception expressly created by the legislature for contracts existing at the time the statute was enacted did not protect subsequent contract rates from a change by

filing (114 Wash. at 107–108), Mobile seeks to urge that only because of this statutory exception did the Washington court find that subsequent contracts were not protected (Brief, pp. 52–3). But the decision leaves no doubt that the reverse was true and that the source of the operation and effect of the filed rate procedure was found in that procedure itself; the statutory exception was treated as the exception it was intended to be and not as the basis for the court's general construction of the statute.

B. STATE CASES RELIED ON BY MOBILE

In the effort to show that its position reflects the predominant state view, Mobile not only tries to discredit the cases upon which we rely, but also claims that its position is independently supported by at least six cases. Two of these (*Commonwealth of Virginia ex rel. Page Milling Co.* v. *Shenandoah Light & Power Corp.*, 135 Va. 47; *Attleboro Steam & Electric Co.* v. *Narragansett Elec. Lighting Co.*, 295 Fed. 895 (D. R. I.)), have already been discussed in our main brief (at p. 80, fn. 52; see, also, p. 68), where we show that in these cases the courts' erroneous reliance upon *Wichita* stemmed in part from their failure to distinguish the filed rate statutes before them from the Kansas statute. In *Attleboro*, the District Court noticed the difference but incorrectly believed that the Rhode Island courts had con-

strued their statute to be the same as Kansas' (295 Fed. at 900–903).[7]

Examination of the other four cases shows that none of them lives up to Mobile's representations.[8] The first, *Birmingham Electric Co.* v. *Alabama Public Service Commission*, 233 Ala. 675 (Mobile brief, p. 51, has already been discussed in our main brief, pp. 82–83, n. 53. Not only does this case deal with an agreed change in *municipal* contract rates which are subject to special provisions in Alabama, but also Mobile's reading (Brief, p. 51) is clearly contradicted by the other

---

[7] *Attleboro* relied for this conclusion as to Rhode Island law upon *Rivelli* v. *Providence Gas Co.*, 44 R. I. 76. There the utility filed increased rates and other changes and the commission entered into a hearing on the new rates and found them just and reasonable, thus utilizing the standards of the hearing provision of the filed rate procedure, comparable to Section 4 (e) of the Gas Act and Section 205 (e) of the Power Act. The Rhode Island court affirmed the decision of the commission. *Attleboro* relied upon the court's passing description of the statute—that no change could be made by the utility except upon 30 days notice and that the commission could not fix rates (referring to the complaint, hearing and order section) except after finding that the existing rates were unreasonable (44 R. I. at 77–78)—as indicating that the filed rate procedure was limited by the commission's power under the complaint, hearing and order section. This was plainly unwarranted; and Mobile itself has not sought to rely on the *Rivelli* case.

[8] Mobile also cites as applicable *Wichita Railroad and Light Co.* v. *Public Utilities Commission*, 260 U. S. 48, even though Kansas does not have a filed rate procedure statute. The *Wichita* case is discussed in our main brief, pp. 72–80 and *infra*, pp. 24–29.